

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 21, 1995

The Council of the City of San Jose convened in regular session at 9:30 a.m.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori (arrived at 10:45 a.m.), Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a), to consider the case of *Loeber v. City of San José, et al.*; and to consider Public Employment/Public Employee appointment pursuant to Government Code Section 54957 to the position titles of Director of General Services and Director of Parks, Recreation and Neighborhood Services.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:15 a.m. and reconvened at 1:40 p.m. in Council Chambers, City Hall.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

INVOCATION

Mrs. Overstreets's Third Grade Class, Williams Elementary School, sang two selections: "Thanks A Lot", introduced by Neema Daneshvar, and "Friends", introduced by Debra Pope; piano accompaniment by Mrs. Hung. (District 10)

PLEDGE OF ALLEGIANCE

Carina Orozco and Mrs. Overstreet's Third Graders led in the Pledge of Allegiance.

The City Council joined Mayor Hammer in acknowledging Mrs. Overstreet's Third Graders Ehsan Anwer, Christopher Bean, Steven Beitashour, Kevin Bertron, Brittney Castanon, Michael Chang, Sara Chen, Tiffany Chung, Neema Daneshvar, Rachel Dickman, Jason Erickson, Joshua Garcia, Andrew Hung, Samantha Hutzler, Shyan Izadian, Eric Jauch, Tara Khazaneh-Darlou, Andrew Kim, Christine Lee, Nicholas Maderis, Nader Majd, Daniel Mason, Michael O'Connor,

Carina Orzco, Stephanie Petersen, Christine Pham, Debra Pope, Arya Sarji, Bryson Teixeira, and Ashley Washington, and thanked them for their presentation.

ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

- 5a Presentation of commendation and award honoring the Outstanding Employee for November 1995 to Linda Riley, Senior Warehouse Worker, Fire Department. (City Manager's Office)**

Documents Filed: None.

Discussion/Action: Joined by Fire Chief Raymond Brooks and Deputy Fire Chief John McMillan, Mayor Hammer and City Manager Regina Williams presented to Linda Riley the commendation and the award in honor of her outstanding contributions as a valued City employee; and in recognition of Linda's employment record, Fire Chief Brooks presented the 10-year award to the employee, and acknowledged the honoree's husband Lon, and friends Kathy and Joe Iola.

CONSENT CALENDAR

Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

Minutes for Approval

- 6a(1) Regular Meeting of October 17, 1995**

Documents Filed: Minutes of October 17, 1995.

Discussion/Action: The Minutes were approved. Vote: 11-0-0-0.

6a(2) Joint City Council/Redevelopment Agency Meeting of October 19, 1995

Documents Filed: Minutes of October 19, 1995.

Discussion/Action: The Minutes were approved. Vote: 11-0-0-0.

Ordinances for Final Adoption

- 6b(1) ORD. NO. 24997 - Rezones certain real property situated on the south side of Blossom Hill Road, 1,000 feet west of Winfield Boulevard.
PDC 94-09-037**

Documents Filed: Proof of publication of the title of Ordinance No. 24997 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24997 was adopted. Vote: 10-0-0-1. Disqualified: Diquisto, due to his absence at November 7, 1995 public hearing.

- 6b(2) ORD. NO. 24998 - Rezones certain real property situated on the southeast corner of The Alameda and Lenzen Avenue.
PDC 95-09-046**

Documents Filed: Proof of publication of the title of Ordinance No. 24998 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24998 was adopted. Vote: 10-0-0-1. Disqualified: Diquisto, due to his absence at November 7, 1995 public hearing.

- 6b(3) ORD. NO. 25002 - Amends the San José Municipal Code by adding a new Title 24 and repealing Parts 1, 2, 3, 4, and 5 of Chapter 17.04, and Chapters 17.52, 17.56, and 17.60 of Title 17 to adopt the Uniform Building, Plumbing, Mechanical, and Electrical Codes; to streamline the issuance of Building Permits; and to repeal unnecessary administrative sections.**

Documents Filed: Proof of publication of the title of Ordinance No. 25002 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25002 was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) TRACT NO. 8765 - South side of East William Street, between Twenty-Second Street and Nineteenth Street - Brookwood Partners, L.P., a California Limited Partnership - 30 residential lots. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8765. CEQA: ND. District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 9, 1995, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66282, entitled: "A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs and Adopting Plans for Tract No. 8765; Resolution No. 66283, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8765"; and Resolution No. 66284, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8765", were adopted. Vote: 11-0-0-0.

Contracts/Agreements

- 6e(1) Report on bids and award of contract for the construction of Wheelchair Ramps Project Unit 1A to the low bidder, Sposeto Engineering, Inc., in the amount of \$149,668. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 3, 1995, recommending Council award said contract to the low bidder.

Discussion/Action: The award of the contract to Sposeto Engineering, Inc., was approved and execution of the contract authorized. Vote: 11-0-0-0.

- 6e(2) Approval of an agreement with Society of Christ for Polonia Church for the time payment of underground in-lieu fees in the amount of \$36,947 due to the City as a condition of a site development permit. CEQA: ND. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 3, 1995, recommending Council approve said agreement.

Discussion/Action: The agreement with Society of Christ for Polonia Church was approved and execution of the agreement authorized. Vote: 11-0-0-0.

- 6e(3) Approval of a cooperation agreement with the County of Santa Clara for the Evergreen Specific Plan widening of Capitol Expressway from U.S. 101 to I-680. CEQA: Resolution Nos. 63179 and 65629. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 3, 1995, recommending Council approve said cooperation agreement.

Discussion/Action: Council Member Diaz asked staff to explain the proposed improvements and whether the project includes landscaping along Capitol Expressway between U.S. 101 to I-680. Director of Public Works, Ralph A. Qualls, Jr., stated the proposed agreement provides for construction of the HOV lanes and intersection improvements as part of the Evergreen Specific Plan but does not include median island improvements or landscaping. He stated the landscaping improvements were not a part of the traffic mitigation, but that Staff could explore the landscaping issue with the County, but not in conjunction with the proposed Evergreen Specific Plan widening of Capitol Expressway. The cooperation agreement with the County of Santa Clara was approved and execution of the agreement authorized; and the discussion with the County of the installation of landscaping in the median island on the Santa Clara County facility was referred to Staff. Vote: 11-0-0-0.

- 6e(4) Adoption of a resolution approving a Memorandum of Agreement with the Association of Building, Mechanical and Electrical Inspectors (ABMEI). (City Manager's Office) (Rules Committee referral 11/15/95)**

Documents Filed: Memorandum from Deputy City Manager, Mark Linder, dated November 15, 1995, recommending Council adopt said resolution.

- 6e(4) (Cont'd.)**

Discussion/Action: Resolution No. 66285, entitled: "A Resolution of the Council of the City of San José (1) Approving the Memorandum of Agreement Between the City of San José and City of San José Association of Building, Mechanical and Electrical Inspectors; (2) Providing for the Payment of Salary and Benefits Pursuant to the Memorandum of Agreement; and (3) Providing That Any Conflict Between the Memorandum of Agreement and Salary Resolution Nos. 51870, 51871, and 51872, the Memorandum of Agreement Shall Prevail", was adopted. Vote: 11-0-0-0.

Routine Legislation

- 6f(1) Approval of certain actions relating to the widening and realignment of San Pedro Street:**
- (a) Rescind previous Resolution of Need and Necessity, Resolution No. 65928, adopted May 23, 1995.**
 - (b) Adoption of a resolution determining that public interest and necessity requires the acquisition of 751 North San Pedro Street, and directing the**

filing of eminent domain proceedings against Michael Guerra, Trustee of a Revocable Trust Agreement. CEQA: Resolution No. 65071.

(Public Works)

[Deferred from 11/7/95 - Item 6f(3)]

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 20, 1995, recommending Council approve certain actions relating to the widening and realignment of San Pedro Street.

Discussion/Action: Resolution No. 66286, entitled: "Resolution of Necessity of the Council of the City of San José Making Certain Findings and Determinations Relating to the Exercise of the Power of Eminent Domain Pursuant to Article 2, Chapter 4, Title 7 of Part 3 of the California Code of Civil Procedure for the Following Project: San Pedro Street Widening and Realignment; Authorizing and Empowering the City Attorney to Bring an Action in Eminent Domain to Acquire Certain Property for Said Project and to Apply for an Order of Possession Before Judgment and to Prosecute Said Action to Final Judgment; and Authorizing and Empowering the Deposit of Money in Court for Possession of Said Property From the Funds Lawfully Available Therefore; and Rescinding Resolution No. 65928", was adopted. Vote: 11-0-0-0.

6f(2) Approval for the City Auditor, Gerald Silva, to travel to Little Rock, Arkansas, on June 10-11, 1996, to participate in the Association of Government Accountants' Annual Conference. (City Auditor)

Documents Filed: Memorandum from City Auditor, Gerald A. Silva, dated November 6, 1995, requesting approval to travel to Little Rock, Arkansas, to participate in the Association of Government Accountants' Annual Conference.

Discussion/Action: The request for City Auditor, Gerald A. Silva, to travel to Little Rock, Arkansas was approved. Vote: 11-0-0-0.

6f(3) Approval for staff to proceed with the next steps associated with analyzing the potential development of a softball complex at the Singleton Landfill. (City Manager's Office)

Documents Filed: (1) Memorandum from Deputy City Manager, Darrell A. Dearborn, dated November 20, 1995, correcting the Cost Implications section of the November 9, 1995 memorandum on the potential softball complex development at Singleton Landfill. (2) Memorandum from Deputy City Manager, Darrell Dearborn, dated November 9, 1995, recommending Council direct Staff to proceed with the next steps associated with analyzing the potential development of a softball complex at the singleton Landfill.

Discussion/Action: City Manager, Darrell Dearborn, presented background information on the complexities of the proposed development of the softball complex on the landfill site. He stated

the Staff presentation on March 24, 1994 during a Committee of the Whole meeting included a summary of the Golf Facilities Task Force report and recommendations to assess four City-owned sites as potential golf facility development sites and softball enthusiasts who expressed an interest in developing the Airport Approach Zone/Guadalupe Gardens area. He stated Staff met with the softball supporters to provide information about an alternate site which could be considered as a concept facility to include a 10-field, lighted softball complex development with amenities and parking—the alternate site discussed was the Singleton Landfill. He stated consultants were retained by the City to prepare and assess appropriate analyses of the approximate 60-acre portion of the landfill and to conduct studies associated with a potential softball complex development on the site, including a preliminary traffic analysis. He stated the level of service impacts for seven major signalized intersections in the vicinity of the landfill site were evaluated and three potential access points were compared to the site. He stated the existing Singleton Road, the construction of an access road over the landfill from Capital Expressway, and construction of an access road from Yerba Buena were the three potential access points studied; therefore, in terms of a balance of both cost and adverse impact, Yerba Buena is the preferred single access route. He recommended proceeding with the concept design and with further assessment of the Singleton Landfill site as a potential location for a softball complex, however, additional work is needed in order to formulate a recommendation to Council. Among preliminary actions which must be taken, he stated a tour of comparable facilities should be conducted by City Staff, a softball development and operations consultant retained to assist in pre-planning efforts associated with the project, including the scope of the consultant's work, and development of a definitive list of Staff efforts must include one community meeting to introduce the community to the facility concept, to solicit comments and concerns, and to schedule further community meetings subsequent to formal Council approval to apprise the community of any progress. He stated Staff proposes to return to Council by April of 1996 with the results of the work efforts, and if appropriate, recommendations to proceed with additional steps necessary to move the project forward. Council Member Shirakawa, Jr., requested that his office and the Sports Authority be involved in the discussion of community meetings. Rodrigo-Roy Hernandez, representing Santa Clara Valley Athletic Association, spoke in support of the softball complex. Staff was directed to proceed with the next steps associated with analyzing the potential development of a softball complex at the Singleton Landfill with the City Manager to include input from Council Member Shirakawa, Jr. and Dean Munro, Executive Director of the Sports Authority, and community meetings to be coordinated with District 7 Office. Vote: 11-0-0.

**6f(4) Adoption of a resolution calling for a General Municipal Election to be held on March 26, 1996 for the purpose of electing one person each from Council Districts 2, 4, 6, 8, and 10. (City Clerk)
(Rules Committee referral 11/15/95)**

Documents Filed: Memorandum from City Clerk, Patricia L. O'Hearn, dated November 13, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66287, entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of a General Municipal Election to be Held in the City of San José on March 26, 1996, for the Purpose of Electing One Person

Each From Council Districts Two, Four, Six, Eight and Ten to the Council of the City of San José for Full Four-Year Terms, Requesting the Consolidation of Said Election With the State Direct Primary Election to Be Held in Santa Clara County on March 26, 1996, Requesting the Board of Supervisors of the County of Santa Clara to Canvass the Returns of Said Election and to Permit the County Registrar of Voters to Render Certain Services to the City of San José Relating to the Conduct of Said Election; Establishing Fees for Candidates Statements and for Filing Notices of Intent to Circulate Petitions; and Directing That Certain Other Actions be Taken With Regard to the Election”, was adopted. Vote: 11-0-0-0.

- 6f(5) Approval of an ordinance of the City of San José amending Chapter 17.12 of Title 17 of the San José Municipal Code to adopt the 1995 California Fire Code, with certain amendments, to codify existing policies and practices with respect to Fire Prevention and storage, use and handling of hazardous materials including toxic gases, and repealing Chapter 17.16. (Fire)
(Rules Committee referral 11/15/95)**

Documents Filed: (1) Supplemental memorandum from City Attorney, Joan R. Gallo, dated November 21, 1995, recommending Council proceed with approval of said ordinance adopting the California Fire Code, with certain amendments. (2) Memorandum from Fire Chief, Raymond Brooks, dated November 15, 1995, recommending Council approve said ordinance.

Discussion/Action: Vice Mayor Johnson commended the Fire Department and the City Attorney for their work in eliminating any duplication and redundancy of the City Ordinance and the California Fire Code in the use and handling of hazardous materials. She acknowledged participation by the cities of Santa Clara and Milpitas, working in conjunction with San José in establishing uniformity of procedures, guidelines and administrative requirements, but urged the Administration to continue working with other agencies in the County in implementing code amendments. Ordinance No. 25005, entitled: “An Ordinance of the City of San José Amending Chapter 17.12 of the San José Municipal Code to Adopt the 1995 California Fire Code With Certain Amendments to Codify Existing Policies and Practices of the City of San José With Respect to the Fire Prevention and Storage, Use and Handling of Hazardous Materials, Including Toxic Gases, and Repealing Chapter 17.16”, was passed for publication. Vote: 11-0-0-0.

- 6f(6) Adoption of a resolution authorizing:**
- (a) The City Manager to submit an application to the Secretary of the California Environmental Protection Agency (EPA) for the City to be the designated Certified Unified Program Agency (CUPA) for managing hazardous materials and hazardous waste regulations in San José.**
 - (b) Direction to the City Manager to continue to negotiate an agreement with the County as a CUPA and the City as a Participating Agency (PA) for the management of hazardous materials and hazardous waste regulations.**

(Fire)
(Orders of the Day 4a)

Documents Filed: Memorandum from Fire Chief, Raymond Brooks, dated November 15, 1995, recommending Council adopt said resolution.

6f(6) (Cont'd.)

Discussion/Action: Resolution No. 66288, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Submit an Application to the California Environmental Protection Agency for the City to be Designated a Certified Unified Program Agency for Managing Hazardous Waste Programs in San José; and to Continue Efforts to Negotiate an Agreement With the County of Santa Clara as a Certified Unified Program Agency and the City as a Participating Agency for the Management of Hazardous Materials and Hazardous Waste Programs", adopted. Vote: 11-0-0-0.

6f(7) Approval for the City Manager, Regina V.K. Williams, to travel to Phoenix, Arizona, on November 28 to December 3, 1995, to attend the National League of Cities Conference. (City Manager's Office)
(Rules Committee referral 11/15/95)

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated November 14, 1995, requesting authorization to travel at City expense to the National League of Cities Conference in Phoenix, Arizona.

Discussion/Action: The request for City Manager, Regina V.K. Williams, to travel to Phoenix, Arizona was approved. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of November 1, 1995 - (Partial)

Documents Filed: (1) Memorandum from City Manager, Regina V.K. Williams, dated November 17, 1995, attaching the memorandum from Director of Environmental Services, Louis Garcia, dated October 19, 1995 regarding commercial recycling, which was distributed to the City Council as part of the Rules Committee packet on October 27, 1995. (2) See City Council minutes of November 14, 1995 for the complete report of the November 1, 1995 meeting of the Rules Committee.

- (5) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
- (a) Referral of commercial recycling issues to appropriate City Council Committee
- [Deferred from 11/14/95 - Item 7b(5)(a)]

The Committee recommended that the current commercial recycling “free-market” policy be maintained while increasing public education and technical assistance outreach in partnership with business support groups such as the Chamber of Commerce and the Santa Clara Manufacturing Group.

Discussion/Action: Vice Mayor Johnson stated the referral was a result of Council Members’ requests for a survey of recycling activity among large commercial operations in San Jose, which was completed by City Staff. Regarding the request for Council approval of recycling plans for large business, she stated Staff recommended that Council continue the current commercial recycling plan; however, Rules Committee recommended Council adopt Staff recommendation with direction for periodic reports on the commercial recycling process through the Transportation, Development and Environment Committee. She stated the reports should also include progress on the development of a program for implementing recycling plans including the scope, goals and timeframe. Comparing the commercial recycling activity to that of residential recycling efforts, Council Member Pandori stated the provision for accurate data collection and diversion information for the commercial sector should be completed prior to the late 1996 timeframe, thereby enabling the City to move toward its diversion goal more quickly and effectively. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the partial report and actions of the Rules Committee meeting on November 1, 1995 were accepted. Vote: 11-0-0-0.

Report of the Rules Committee - Meeting of November 8, 1995

Documents Filed: Rules Committee report of November 8, 1995.

- (1) Review of November 21 Council Agenda

The Committee recommended approval of the November 21, 1995 Council Agenda with one addition and two changes.

Report of the Rules Committee - Meeting of November 8, 1995 - (Cont’d.)

- (2) Add New Items to November 14 Amended Council Agenda

The Committee recommended four additions and one change to the November 14, 1995 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated November 2, 1995, listing the items transmitted to the Administration and the items filed for the Public Record for the period October 25-31, 1995. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated November 6, 1995, summarizing actions taken on those items transmitted to the Administration and those items filed for the Public Record for the period October 25-31, 1995. (3) Letter from Anne Stahr, Housing Division, Catholic Charities, dated November 7, 1995, responding to the Administration's recommendation to not schedule the organization's request for Council consideration on November 21, 1995.

The Committee referred to the Housing and Community Services Committee meeting of December 4, 1995, with a one-week report out to Council on December 12, 1995, a discussion of policy issues regarding SROs, purchase rehabs and flexibility of 10% setaside; and recommended approval of the Public Record.

- (4) Council Referrals for Assignment to Appropriate Committee,

None presented.

- (5) City Council and Rules Committee meeting schedules

- (a) Discussion of schedule of evening Council meetings between mid-December 1995 and February 1996

The Committee recommended that any land use items which would require a public hearing before February 1996 will be considered at Rules In Lieu on January 3, 1996; and that the November 16, 1995 General Plan Hearing will be continued to December 5, 1995.

- (6) Oral communications

None presented.

- (7) Adjournment

The meeting adjourned at 3:15 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the Rules Committee report and actions of November 8, 1995 were accepted. Vote: 11-0-0-0.

7c Report of the Housing and Community Services Committee - November 6, 1995

Documents Filed: Housing and Community Services Committee report of November 6, 1995.

- (1) Consent Calendar. Attachments: (1) Memorandum from Director of Housing, Alex Sanchez, dated October 24, 1995, submitting the report on activity during the first quarter of the 1995-96 Fiscal Year in the Housing Rehabilitation Program. (2) Memorandum from Director of Conventions, Arts and Entertainment, Ellen Oppenheim, dated October 25, 1995, recommending Council approve the Arts Commission's recommendations for changes to the 1996-97 Arts Grants Program Guidelines. (3) Memorandum from Director of Housing, Alex Sanchez, dated October 26, 1995, attaching the Project Development Quarterly Report for the first quarter of the 1995-96 Fiscal Year.
 - (a) Housing Rehabilitation Program Quarterly Report
 - (b) 1996-97 Arts Grant Guidelines
 - (c) Project Development Program Quarterly Report

The Committee accepted the Staff reports

- (2) Approval of 1996 Public Art Workplan. Attachment: Memorandum from Director of Conventions, Arts and Entertainment, Ellen Oppenheim, dated October 24, 1995, recommending approval of Arts Commission recommendations contained in the attached 1996 Public Art Workplan.

The Committee recommended approval of the Staff report.

- (3) Consider Youth Services Master Plan Implementation Plan. Attachment: Memorandum from Deputy Director, Parks, Recreation and Neighborhood Services, Nadine Felix, dated November 2, 1995, transmitting the Draft Action Plan for the Youth Services Master Plan, dated November 1995.

The Committee accepted the action plan for the Youth Services Master Plan, and directed Staff to return in January 1996 to the Housing and Community Services Committee.

- (4) Maintenance Agreement between Parks, Recreation and Neighborhood Services, and General Services Departments for neighborhood parks. Attachments: (1) Revised memorandum from Deputy City Manager, Darrell A. Dearborn, dated November 2, 1995, recommending the Housing and Community Services Committee accept the status report on the proposed Memorandum Of Understanding between Parks, Recreation, and Neighborhood Services and General Services Administration. (2) Memorandum from Deputy City Manager, Darrell A. Dearborn, dated October 24, 1995, providing a status report on the proposed MOU between the Departments of Parks, Recreation and Neighborhood Services and General Services Administration, and recommending that the City Council approve the proposed MOU between PRNS and GSA.

The Committee recommended approval of the status report.

- (5) Consider Central Tow Yard Evaluation Process

The Committee continued this item to December 4, 1995 meeting of the Housing and Community Services Committee.

- (6) Oral petitions

William Garbett spoke to the Committee regarding the Five-Year Housing Investment Plan.

- (7) Adjournment

The meeting was adjourned at 3:07 p.m.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Shirakawa, Jr., and unanimously carried, the Housing and Community Services Committee report and actions of November 6, 1995 were accepted. Vote: 11-0-0-0.

7d Report of the Finance Committee - November 8, 1995

Documents Filed: Finance Committee report of November 8, 1995.

- (1) Oral petitions

Kathy Chavez-Napoli discussed an announcement which was included in her garbage bill regarding yard waste. Albert Drost expressed concern related to time limits at an unrelated meeting.

- (2) Monthly Investment Report for September 1995. Attachment: Report of the monthly investment for September 1995, prepared by the Finance Department - Treasury Division.

The Committee accepted the report.

- (3) Monthly Financial Report for September 1995. Attachment: Memorandum from Budget Director, Larry D. Lisenbee, dated October 25, 1995, transmitting the monthly financial report for September of 1995.

The Committee accepted the report.

- (4) Minutes of September 28, 1995 Investment Committee Meeting. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated October 23, 1995, attaching the minutes of the September 28, 1995 quarterly meeting of the City's Investment Committee.

The Committee accepted the report.

- (5) 1996-97 Budget Calendar. Attachment: Memorandum from Budget Director, Larry D. Lisenbee, dated November 1, 1995, recommending the City Council adopt the proposed 1996-97 Budget Calendar.

The Committee recommended approval of the Budget Calendar.

- (6) Administration's Response to Auditor's Report on Project Milestones

The Committee deferred this item to December 13, 1995 Finance Committee meeting.

- (7) Presentation of City Comprehensive Annual Financial Report. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated November 2, 1995, transmitting the 79th Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 1995.

The Committee accepted the report.

- (8) Follow-up to Arena Management Audit. Attachment: Memorandum from City Auditor, Gerald A. Silva, and Deputy City Manager, Darrell A. Dearborn, dated November 7, 1995, discussing three of the recommendations in the City Auditor's report on the San José Management Audit.

The Committee accepted the report as modified to reflect changes to recommendation items #2 and #15, and deleting item #5.

- (9) Annual Citywide Overtime Report for FY 1994-95. Attachment: Memorandum from Assistant City Manager, Debra J. Figone, dated November 3, 1995, submitting 1994-95 Citywide overtime information.

The Committee accepted the report.

- (10) Workers' Compensation and General Liability Funds-Part II. Attachment: Memorandum from Deputy Director of Finance, Mark E. Burton, dated November 3, 1995, recommending that the Committee approve the Staff recommendation as detailed in the October 19, 1995 staff report on Workers' Compensation and General Liability Funds.

The Committee accepted the report and possible alternatives to the present program, and recommended approval of Staff recommendation items #1 and #2 with direction to Staff to report back with insurance information for further consideration by the Finance Committee.

- (11) Committee schedule

None presented.

(12) Adjournment

The meeting was adjourned at 12:20 p.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini and unanimously carried, the Finance Committee report and actions of November 8, 1995 were accepted. Vote: 11-0-0-0.

7e Report of the Transportation, Development, and Environment Committee - November 9, 1995

Documents filed: Transportation, Development and Environment Committee report of November 9, 1995.

(1) Consent Calendar. Attachments: (1) Quarterly Report No. 1 for October 1995 on the Downtown San José Transit Study. (2) Fremont–South Bay Corridor Status Report for October 1995. (3) Vasona and Capitol Corridors Status Report for October 1995.

- (a) Downtown San José Transit Study Quarterly Report No. 1 Status Report
- (b) Fremont-South Bay Corridor Status Report - October 1995
- (c) Vasona and Capitol Corridors Status Report - October 1995

The Committee accepted the status reports.

(2) Update on the Semi-Annual Integrated Waste Management (IWM) Division's FY 94-95 Report. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 30, 1995, responding to specific questions from TD&E regarding the Integrated Waste Management Division's FY 1994-95 report.

The Committee accepted the report.

(3) Status Report on Electric Industry Restructuring. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 30, 1995, recommending Council adopt a resolution authorizing the City Manager to (a) negotiate and execute the ABAG Subscription Agreement, (b) execute and reject the natural gas purchase agreement contract and the PG&E distribution agreement negotiated through the ABAG competitive bid process; and (c) participate on the ABAG Power Purchasing Pool Steering Committee.

The Committee accepted the status report with no further action required.

- (4) Report and Recommendation on Third and Fourth Streets Conversion Study Within the Hensley Historic District. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated October 27, 1995, recommending Council (a) accept the consultant's report for the third and Fourth Streets conversion study; and (b) refer the conversion of Third and Fourth Streets between Saint John and Jackson Streets to the Capital Improvement budget process and to investigate potential grant funding sources.

The Committee recommended approval of the Staff report recommendations with referral of this item to the Budget process.

- (5) Report and Recommendation Regarding Sidewalk Repair Improvement Project. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated October 20, 1995, recommending Council adopt a resolution to (a) commence a sidewalk repair cost-sharing program on February 1, 1996; (b) implement a one-third cost-sharing program for owner occupied single family homes and duplex properties; and (c) allocate \$10,000 to hire a temporary contract account clerk to assist in reimbursement distribution.

The Committee recommended approval of Staff report and recommendations.

- (6) Report and Recommendation on Trial Removal of Automobile Restrictions Through Saint James Park. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated October 27, 1995, recommending the City Council (a) endorse the proposal of the Santa Clara County Transit Board of Directors to approve a six-month trial of the removal of automobile restrictions from Second Street through Saint James Park; (b) direct Streets and Traffic to implement the necessary changes to the signing and striping on sections of the Transit Mall to effect the removal of those restrictions; and (c) direct Streets and Traffic in concert with Parks, Recreation and Neighborhood Services to work with the Transportation Agency in evaluating the trial period, paying particular attention to the concerns of the Parks and Recreation Commission and in developing joint recommendations on the permanent status of Second Street through the park.

The Committee accepted the Staff report and recommendations.

- (7) Report on Pullman Way Maintenance Facility

The Committee dropped this item from the Agenda with direction to Staff to return to the Transportation, Development and Environment Committee upon completion of the report.

- (8) Approval of Proposed Projects for Federal Transportation Enhancement Activities (TEA) Funds. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 26, 1995, recommending Council adopt a resolution approving a proposed list of projects for federal Transportation Enhancement Activities funding, certifying that the City will provide local matching funds for those projects that are implemented, and authorizing the Director of Public Works to forward project applications to the Metropolitan Transportation Commission.

The Committee recommended approval of the Staff report.

Discussion/Action: See Item 9e for Council action taken.

- (9) Approval of Proposed Projects for Federal Surface Transportation Program (STP) Funds. Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 26, 1995, recommending Council adopt a resolution approving a proposed list of projects for federal Surface Transportation Program funding, certifying that the City will provide local matching funds for those projects that are implemented, and authorizing the Director of Public Works to forward project applications to the Metropolitan Transportation Commission.

The Committee recommended approval of the Staff report.

Discussion/Action: See item 9f for Council action taken.

- (10) Oral petitions

None presented.

- (11) Adjournment

The meeting was adjourned at 3:10 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini and unanimously carried, the Transportation, Development and Environment Committee report and actions of November 9, 1995 were accepted with Item 7e(8) acted upon at Item 9e and Item 7e(9) acted upon at Item 9f. Vote: 11-0-0-0.

- 9c (1) Adoption of a resolution authorizing the City Manager to negotiate and execute a long-term parking agreement with Netcom On-Line Communications Services, Inc. (Netcom) for 450 parking spaces at the Third Street Garage, and 350 parking spaces at the Market Street/San Pedro Square Garage to begin no sooner than February 1, 1996. The agreement should be concurrent with the length of the building lease between Netcom and the Horizon Center, but not to exceed ten (10) years.**

- (2) Refer to the mid-year budget process, the City's payment to the Parking Fund for City employee parking.
 - (3) Refer to the on-going Three-Year Downtown Parking Plan process, consideration of the sale of public parking assets, as an option, for the financing of future parking facilities and the development of a policy regarding the future allocation of monthly parking spaces.
- (Streets and Traffic)

Documents Filed: None.

Discussion/Action: This item was deferred to November 28, 1995.

- 9d Recommendation that the City Manager be encouraged to meet with the Chairs of the Police and Fire and Federated Retirement Boards to resolve remaining issues regarding the recruitment, employment, retention, and reporting responsibility of the Director of Retirement. (Fiscalini)
(Rules Committee referral 11/15/95)**

Documents Filed: (1) Memorandum from City Manager, Regina V.K. Williams, dated November 15, 1995, noting that formal Council action to encourage the City Manager to meet with Board Chairs is unnecessary, and that attempts to reach accord will continue. (2) Memorandum from Council Member Fiscalini, dated November 15, 1995, recommending Council direct the City Manager to meet with the Chairs of the Police and Fire and Federated Retirement Boards to resolve remaining issues regarding the recruitment, employment, retention and reporting responsibility of the Director of Retirement, and that February 1996 be established as the deadline for completion of the work.

Discussion/Action: Council Member Fiscalini acknowledged support for the action proposed by the City Manager in her November 15, 1995 memorandum; therefore, no Council action was taken. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the information was noted and the report filed. Vote: 11-0-0-0.

- 9e Adoption of a resolution approving a proposed list of projects for submittal for Transportation Enhancement Activities (TEA) funding and authorizing the Director of Public Works to forward project applications to the Metropolitan Transportation Commission (MTC).
[Transportation, Development & Environment Committee referral 11/9/95 - Item 7e(8)]**

Documents Filed: See Transportation, Development & Environment Committee report of November 9, 1995, Item 7e(8).

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Dando and unanimously carried, Resolution No. 66289, entitled: "A Resolution of the Council of the City of San José Approving a Proposed List of Projects for Submittal for Transportation Enhancement Activities (TEA) Funding, Certifying That the City Intends to Provide Local Matching Funds for Those Proposed Projects Selected For Funding and Authorizing the Director of Public Works to Forward Project Applications to the Metropolitan Transportation Commission (MTC)", was adopted. Vote: 11-0-0-0.

- 9f Adoption of a resolution approving a proposed list of projects for submittal for a Surface Transportation Program (STP) funding and authorizing the Director of Public Works to forward project applications to the Metropolitan Transportation Commission (MTC).
[Transportation, Development & Environment Committee referral 11/9/95 - Item 7e(9)]**

Documents Filed: See Transportation, Development & Environment Committee report of November 9, 1995, Item 7e(9).

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66290, entitled: "A Resolution of the Council of the City of San José Approving a Proposed List of Projects for Submittal for Surface Transportation Program (STP) Funding, Certifying That the City Intends to Provide Local Matching Funds for Those Proposed Projects Selected For Funding, Certifying That the City Will Complete Those Proposed Projects Implemented as Described in the Application, and Authorizing the Director of Public Works to Forward Project Applications to the Metropolitan Transportation Commission", was adopted. Vote: 11-0-0-0.

- 9g Adoption of a resolution authorizing the City Manager to negotiate and execute a group health agreement with America Insurance Company to provide a medicare supplement plan for retirees for the period January 1, 1996 to December 31, 1998.
(Human Resources)
(Rules Committee referral 11/15/95)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Director of Human Resources, Nona Tobin, advised Council that the item as scheduled does not require Council action, but enables the Administration to report on the progress made to provide retirees with an improved medicare supplement as requested by the retirees. She stated PacifiCare will offer to the retirees an improved benefit package for the medicare supplement program, which is cost efficient for the participant, provides improved prescription benefit, creates ease of administration for the City, and allows the Plan to fully cover dependents that are not

medicare eligible. Upon motion by Council Member Fiscalini, seconded by Council Member Fernandes and unanimously carried, the resolution was not adopted and no Council action was taken based on previous authorization to execute contract with PacifiCare to provide retirees with improved medicare supplement health coverage. Vote: 11-0-0-0.

**9h Adoption of a resolution opposing the proposed Securities Litigation Reform Act, H.R. 1058/S.240. (City Attorney's Office)
(Orders of the Day 4b)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini and unanimously carried, Resolution No. 66291, entitled: "A Resolution of the Council of the City of San José Opposing the Proposed Federal Securities Litigation Reform Act (H.R. 1058/S.240)", was adopted. Vote: 11-0-0-0.

The Redevelopment Agency Board convened at 2:27 p.m. to consider the following item in a joint session.

11a Adoption of City and Agency resolutions for approval of the actions relative to the City's funding commitment in the amount of \$16,300,000 for the Route 87 freeway project:

- (1) Adoption of appropriation ordinance and revenue resolution amendments in the Building and Structure Construction Tax Fund to provide an additional \$1,000,000 for the Route 87 Construction Project.**
- (2) Direction to City staff to prepare financing options for funding the remaining local share of the project cost in the amount of \$15,300,000 as part of the FY 1996-97 budget process.**
- (3) Authorization for the City Manager and Executive Director to negotiate and execute an agreement between the City and the Agency providing the City to advance, and the Agency to repay, the \$1,000,000 near term project design and management costs for Route 87.**

**(City Manager's Office/Redevelopment Agency)
(Deferred from 11/14/95 - Item 9b)**

Documents Filed: (1) Memorandum from City Manager Regina V.K. Williams, and Redevelopment Agency Executive Director Frank Taylor, dated November 14, 1995, recommending adoption of the City and Agency Resolutions for approval of the actions relative to the City's funding commitment for the Route 87 freeway project. (2) Memorandum from Budget Director, Larry D. Lisenbee, dated November 16, 1995, recommending Council approve said appropriation ordinance and revenue resolution amendments in the Building and Structure Construction Tax Fund.

Discussion/Action: Director of Public Works, Ralph A. Qualls, Jr., stated the City Council on October 10, 1995 approved a financing strategy for the project to upgrade Route 87 to a freeway between Julian Street and Route 101 which included two components—City funding commitment and increased State funding. He stated the schedule of needs for City funding includes deferral of \$2,000,000 from FY 1995-96 to FY 1996-97 and is subject to Federal Highway Administration approval, and that Staff recommends Council approval of the \$1,000,000 for Route 87 to support project design and management activities. Noting his opposition is consistent with a prior vote on the Route 87 freeway project, Council Member Pandori stated he viewed the proposal as a means to restore funds that were cut from the Redevelopment Agency budget during the recent Budget Review process. He acknowledged the need to fund the highway project, but objected to the use of an additional \$1,000,000 for the Project appropriated by the City through the Building and Structure Construction Tax Fund. Council Member Dando agreed the completion of Highway 87 is a priority of the City and that she supports the most efficient way of completing the project; however, the proposed funding proposal is unacceptable, as the project should be financed by Redevelopment Agency. As a point of clarification, Mayor Hammer stated the recommended funding proposal for the \$1,000,000 cost includes repayment provisions for the Redevelopment Agency. Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini and carried, Ordinance No. 25006, entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 Which Appropriates Moneys in the Building and Structure Construction Tax Fund in the Amount of \$1,000,000, for the Route 87 Construction Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 66292, entitled: “A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66026 for the Fiscal Year 1995-96 to Adjust Revenues in the Building and Structure Construction Tax Fund”; and Resolution No. 66293, entitled: “A Resolution of the Council of the City of San José Concerning Route 87 Funding”, were adopted. Vote: 8-3-0-0. Noes: Dando, Diquisto, Pandori.

The Redevelopment Agency Board portion of the meeting adjourned at 2:35 p.m.

CLOSED SESSION REPORT

Disclosure of Closed Session Actions of November 17, 1995 reported by Mayor Hammer:

Appointment Confirmation:

- (1) Ellis M. Jones, Jr.
Director, General Services

Council Vote: Ayes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: None.

Absent: None.
Disqualified: None.

CLOSED SESSION REPORT

Disclosure of Closed Session Actions of November 17, 1995 reported by Mayor Hammer:

Appointment Confirmation:

- (2) Ellis Mitchell
Director, Parks, Recreation and Neighborhood Services

Council Vote: Ayes: Diaz, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: Dando, Diquisto, Pandori.
Absent: None.
Disqualified: None.

ORAL COMMUNICATIONS

- (1) Rodrigo-Roy Hernandez, representing Santa Clara Valley Athletic Association, expressed appreciation to the City Council for consideration of the multi-sports softball complex.
- (2) Cathy S. Brandhorst addressed Council on the availability of services to the homeless in San José.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 2:40 p.m. and reconvened at 7:07 p.m., Council Chambers, City Hall.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Fiscalini, seconded by Council Member Fernandes and unanimously carried, the below noted continuances and other actions were granted. Vote: 11-0-0-0.

15b PUBLIC HEARING ON CONVENTIONAL REZONING of the property located on the northeasterly corner of Monterey Road and Rancho Drive, from C-2

**Commercial to C-3 Commercial, to allow the commercial uses on 2.16 gross acres (El Rancho Properties, Owner; The L. G. Group, Developer). CEQA: ND.
C 94-12-053 - District 7**

Documents Filed: None.

Discussion/Action: This item was continued to December 5, 1995.

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Lewis Road, northerly terminus of Wall Street and Water Street, from A(PD) to A(PD), to allow up to 93 single-family detached residential units on 10.92 gross acres (Theodore Parker, Owner; Lewis Road Associates, L. P., Developer). CEQA: ND.
PDC 95-02-011 - District 7**

Documents Filed: None.

Discussion/Action: This item was continued to February 6, 1996.

- 5b Swearing in of Youth Commissioners from Districts 1, 4, 6, 8, 9, and City-wide. (Mayor)**

Documents Filed: Memorandum from City Clerk, Patricia L. O’Hearn, dated November 16, 1995, submitting the names of Youth Commissioners to be appointed and sworn in during the evening session of the November 21, 1995 Council meeting.

Discussion/Action: City Clerk, Patricia L. O’Hearn administered the Oaths of Office to Youth Commissioners Erika Nelson–District 1, Laura Melendez–District 4, Michel Amaral–District 6, Kimberlee Ann Clark–District 8, and Russell Bither-Terry–District 9. The swearing in of the Citywide representative was deferred to December 5, 1995.

- 15d PLANNED DEVELOPMENT REZONING of the property located on the south side of Kentwood Avenue, approximately 430 feet westerly of Saratoga-Sunnyvale Road, from A(PD) to A(PD), to allow a child day care center for up to 26 children in an existing commercial building on 1.88 gross acres (Groner Limited Partnership, Owner; The Hopkin Companies, Developer). CEQA: Exempt. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 95-10-048 - District 1**

Documents Filed: (1) Memorandum from the Planning Commission, dated November 3, 1995, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning PDC 95-10-048, dated October 17, 1995, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Planned Development Rezoning of the subject property. There was no discussion from the Floor. Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25007, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Kentwood Avenue, 430 Feet Westerly of Saratoga-Sunnyvale Road", was passed for publication. Vote: 11-0-0-0.

9a Youth Protection Ordinance Status Report. (Police)

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated November 13, 1995, recommending Council approve the attached Youth Protection Curfew Program Evaluation First Year Report and the recommendations contained therein.

Discussion/Action: Chief of Police, Louis A. Cobarruviaz, highlighted significant aspects of the Youth Protection Curfew Program and summarized major findings related to the program's first year of operation beginning August 11, 1994 through August 10, 1995. He stated the Police Department believes that the Youth Protection Curfew Program has been effective in reaching its intended target population and recommends that it be continued; and to enhance the overall effectiveness of the Program, the Police Department further recommends (1) that the Department continue to collect the data used in the evaluation to ensure proper ongoing monitoring of the program; (2) that the program's performance be reviewed on an annual basis; (3) that additional support services be identified for juveniles who violate the curfew; (4) that the development of Youth Protection Team (YPT) officers be conducted in a manner which will allow the Police Department to respond effectively and efficiently to areas of greater need, such as the downtown, while maintaining a basic level of service to all areas of the City; and (5) that the reinstatement of the five sworn positions which were converted to overtime monies in the 1995-96 adopted budget, as well as funds to fully support the curfew program, be considered as part of the 1996-97 Budget Review process. Esther Medina, Executive Director of MACSA addressed Council on various aspects of the Youth Protection Curfew Program. Patricia Martinez-Roach commended Staff on the success of the Program and urged Council to investigate certain allegations of harassment of minors while detained by Police Officers. Council Member Shirakawa, Jr., spoke in support of the Youth Protection Ordinance and staff recommendations and requested that the Police Chief schedule a discussion of the youth curfew issue during the Youth Summit Conference. He stated the statistics document many one-time violators, which is indicative that further education and outreach is necessary. Council Member Diaz agreed with the need to increase educational programming, but underscored the necessity for increased family counseling services as well as the creation of outreach efforts to the schools of affected youth, and the development of effective programming on Friday and Saturday nights for the purpose of deterring migration of youth to the downtown area. He

recommended that Council refer the Youth Protection Curfew Program to the Housing and Community Services Committee for review and consideration in conjunction with the Youth Service Implementation Plan to augment available services. Mayor Hammer suggested Council approval include a referral of the Program to the Mayor's Gang Task Force for review and input. Council Member Pandori stated the Youth Protection Program was funded by savings diverted from frozen positions; however, an independent funding source should be identified in the City Budget. Upon motion by Council Member Diaz, seconded by Council Member Shirakawa, Jr., and unanimously carried, the Youth Protection Curfew Program Evaluation First Year Report and recommendations contained therein were approved with identification of an independent funding source referred to the Budget process .

9b Approval of the actions in regard to the Phase IA Regional Geologic Study for the Special Geologic Hazard Study Area:

- (1) Accept the findings and recommendations of the Phase IA Regional Geologic Study for the Special Geologic Hazard Study Area and direct the Director of Public Works to implement the recommendations of the Study.**
- (2) Direct the Director of Public Works to redefine the lower westerly area in the Special Geologic Hazard Area to include it in the Standard Geologic Hazard Study Area and exempting this area from the Phase II Study.**
- (3) Direct the Director of Public Works to resume accepting all applications for geologic hazard clearances in the Special Geologic Hazard Study Area, subject to geologic/geotechnical investigations and review as recommended in this report.**

(Public Works)

Documents Filed: (1) Document binder containing the "Final Report – Phase IA Regional Geologic Study of the Special Geologic Hazard Study Area", prepared by Norfleet Consultants, dated October 31, 1995. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 8, 1995, recommending Council approve the actions in regard to the Phase IA Regional Geologic Study for the Special Geologic Hazard Study Area. (3) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 17, 1995, recommending Council approve special criteria to allow construction of a single family residence on existing lots within the Special Geologic Hazard Study Area and direct the City Attorney to prepare an amendment to the Geologic Hazard Ordinance to incorporate the criteria into the Special Geologic Hazard Study Area. (4) Memorandum from Council Member Fernandes, dated November 17, 1995, requesting the Director of Public Works and the City Attorney consider the feasibility of requiring regional studies for individual lots in the area and define in more detail the criteria and mitigation that would be necessary to allow development on these lots without a Phase IB or II study; and to report to the Council the analysis and recommendations during the meeting of November 21, 1995. (5) Memorandum from Council Member Fernandes, dated November 21, 1995, stipulating additional requests to the Staff recommendations outlined in the November 8, 1995 memorandum from Public Works and to recommendations contained in her

November 17, 1995 memorandum. (6) Letter from Greenbelt Alliance, South Bay Field Director, Vicki Moore, dated November 20, 1995, supporting Council Member Fernandes' proposed amendment. (7) Facsimile from Geoffrey L. Robinson, McCutche, Doyle, Brown & Enersen, dated November 21, 1995, transmitting a letter protesting the continued deferral of the geologic hazard clearances for Gill Properties' projects following issuance of the Norfleet Report. (8) Letter from Stephen L. Kostka, McCutchen, Doyle, Brown & Enersen, dated November 21, 1995, protesting on behalf of Davidon Homes and Davidon Corporation, the continued deferral of the geologic hazard clearances for Davidon's development project following issuance of the Norfleet Phase IA Geologic Report. (9) Letter from Attorney Norman E. Matteoni of Matteoni, Saxe & Nanda, representing Gill Properties, dated November 20, 1995, objecting to the recommended actions.

Discussion/Action: Using transparencies of the Special Geologic Hazard Study Area, Deputy Director of Public Works, Carl Mosher, explained that the East Foothills are bounded on the north by Milpitas City limits, the foothills on the easterly side, Alum Rock Park to the south in which Penitencia Creek is the most southerly boundary of the area, and Piedmont Road as the westerly boundary of the area. He stated recognition of extensive slope instability in the east foothills areas, and its effects on public infrastructure, occurred in the late 1960's following the City's approval for the construction of the first hillslopes subdivision in the San José Highlands tract. He stated large scale landsliding of the Boulder Drive Landslide Complex occurred in the winter of 1982-83 and resulted in the deformation and closure of the lower section of Boulder Drive, and the purchase of several homes by the City; therefore, movement of the Boulder Drive Landslide Complex was the impetus for the first City geologic hazard ordinance in 1984. In presenting background information of the action taken by the City, he stated the City Council on August 10, 1993 adopted an urgency ordinance imposing a six-month moratorium on all development in the area, and in February of 1994 City Staff requested that Council extend the moratorium for a period of six months. He stated the City Council in March of 1994 accepted the San José East Foothills Geologic Review Panel Report and adopted an urgency ordinance redefining the East Foothills Moratorium Boundary and resumed acceptance of geologic hazard applications for additions to existing structures; after which the City Attorney was directed to draft an ordinance amending the Geologic Hazard Ordinance. He stated the City Council at its August 23, 1994 meeting adopted the amended geologic hazard ordinance which established the Special Geologic Hazard Study Area with a Phase I and Phase II Regional Study requirement. In response to Council direction to Staff to determine the cost to the City to prepare a portion of the Study, he pointed out that Staff recommended and Council approved on February 7, 1995 the selection of Norfleet Consultants to complete the Special GHSA Phase IA Regional Geologic Study for the region and that major criteria and elements of the Phase IA Study to be undertaken by Staff involved (1) a review of all known data compiled and documents filed with the City for geologic hazard clearances, reports and information available from the County, and any other pertinent information submitted by private property owners; (2) determination of the existence/non-existence of deep-seated and active landslides and information to substantiate such; (3) identification of regions that could be subdivided, if possible; and (4) the removal of areas from the Special Geologic

Hazard Study Area, if applicable. Referencing the map of the three subregion locations of the Special Geologic Hazard Study, he stated Staff recommends that the Lower Foothills Area–Subregion 3– be removed from the Special Geologic Study Area, and that the properties within this area no longer be subject to a Phase IB or Phase II Study but subjected to a Site Specific Study–albeit, they would remain a part of the Geologic Hazard Area but not a part of the Special Geologic Hazard Study Area. He pointed out the “blue” area of the map–the Upper Foothills Area, Subregions 8 and 25–appear to be free of landslides and would be subject to a Site Specific Study within the area and must participate in a Regional Study to support development proposals. He stated the Middle Foothills Area, Subregions 1, 2, 4-7, 9-24, 26-61–require additional work because of the existence of deep-seated landslide activity, and that development can occur within those subregions. He stated the development of existing properties in the Middle Foothills Area would be subject to a Site Specific Study; however, an existing, undeveloped parcel with infrastructure to support a single-family residence must be subjected to a Site Specific Study which will be considered an issue of geologic hazard clearance, as applicable. He stated several public meetings have been held related to the Studies, including meetings with the Berryessa Community Action Council, Davidon Homes and Davidon Corporation, and Gill Properties. He concluded with definitive answers to the existence of “numerous other problems with the report” as conveyed by Attorney Norman E. Matteoni in his letter of November 20, 1995, to the Mayor and City Council Members, which objected to the recommended actions by the Director of Public Works. He recommended that the Staff recommendations as presented be approved in order for Staff to proceed with the next phase. Agreeing with the Director of Public Works’ recommendation regarding the Phase IA Study for the Special Geologic Hazard Area in the Berryessa Foothills, Council Member Fernandes stated regional studies are necessary for each individual lot in the area, and that some of the single lots adjacent to existing sewer lines and utilities can be safely developed with a Site Specific Geological clearance; however, such lots would comply with specific criteria, and any proposed construction would include adequate mitigation as determined by the Director of Public Works. She recommended that Council (1) accept the findings and recommendations of the Phase IA Regional Geologic Study as contained in the Staff report; (2) redefine the lower westerly area to include in the Standard Geologic Hazard Area; (3) resume accepting all applications for geologic hazard clearances in the Special Geologic Hazard Study Area; (4) consider developing special criteria which could, with proper study, findings and mitigation, allow development of single lots; (5) that the Public Works Department provide a 60-day and six-month report to the Transportation, Development and Environment Committee regarding the status of all applications submitted for the Phase IB Study; and (6) that the Public Works Department immediately retain a consultant to advise the City on matters related to the Phase IB Study. The following citizens spoke in opposition to the proposal: Yvonne Ryzak, representing Gill Properties; Jeff Thayer, representing Davidon Homes; Gary E. Hansen; and Wilbur L. Twelker. The following spoke in support of Council Member Fernandes’ recommendation: Chuck Reed; Siamak Sani; Bill Hughes, President, Berryessa Citizens Advisory Council; Robert Lindley; William Braswell; Henry Servin, representing Greenbelt Alliance; Craig K. Breon, representing Santa Clara Valley Audubon Society; Fadi A. Saba, Chair, Santa Clara County Greenbelt Coalition; and Lynne Larsen. The following citizens addressed Council on

various aspects of the subject: Elisa Lindley; Kathleen Sonntag; Bob Garvig; Dr. Jeffrey A. Johnson, representing Gill Properties; and Norman A. Matteoni, representing Gill Properties. Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, (1) recommendations as contained in Staff report dated November 8, 1995, were approved, (2) recommendations as contained in Supplemental Staff report dated November 17, 1995 were approved; (3) additional recommendations as contained in Council Member Fernandes' memorandum of November 17, 1995 were approved; and (4) recommendations as contained in Council Member Fernandes' memorandum of November 21, 1995 were approved with thanks to Veronica Davey and Assistants Cynthia James and Sean Morley for their hard work. Vote: 11-0-0-0.

- 15a PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the westerly side of Senter Road, 500 feet southerly of Phelan Avenue, from M-1 Manufacturing to A(PD) Planned Development, to allow retail, self-serve, used automobile dismantling and recycling center on 16.1 gross acres (DDD Partners/Per Pap, Owner; Pick Your Part, Developer). CEQA: EIR Resolution to be adopted. Director of Planning recommends approval. Planning Commission recommends approval with staff recommending conditions modified as follows: 1) to give the Planning Commission responsibility for determining the need for a compliance review and for increased inspection services after the first three (3) years; and 2) to allow an alternative to the recommended liner that provides equal protection from soil and groundwater contamination (5-1-1).**

PDC 94-11-048 - District 7

(Continued from 10/17/95 - Item 15c)

Documents Filed: (1) Memorandum from the Planning Commission, dated November 17, 1995, recommending Council adopt an ordinance approving the subject rezoning with the condition as specified. (2) Supplemental memorandum from the Planning Commission, dated November 8, 1995, recommending that Council adopt an ordinance approving the subject rezoning with the condition that prior to the City Council Hearing that the project developer revise the project plans to include those conditions as proposed by staff and subsequently modified at the November 1, 1995 Planning Commission meeting. (3) Memorandum from the Planning Commission, dated November 3, 1995, recommending Council adopt an ordinance approving the subject rezoning with the condition that prior to City Council the project developer revise the project plans to include those conditions as proposed by Staff and subsequently modified at the November 1, 1995 Planning Commission meeting. (4) Correspondence responding to the proposed Pick Your Part facility. (5) Undated Petitions bearing signatures of residents opposing the construction of the 16-acre auto wrecking yard on Senter Road and urging Council to consider the negative impact on private and City-owned properties in the area. (6) Correspondence in support of Pick Your Part Automobile Dismantling Yard to be located on Senter Road. (7) Correspondence discussing various aspects of the proposal and project site. (8) Public Hearing Notice to consider a change in Zoning PDC 94-11-048, dated September 6, 1995 and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Planned Development Rezoning of the subject property. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, stated the proposal will allow the development of an automobile recycling facility in San José. He stated the project developer was unable to revise the plans in time to be included with the first report to the City Council. He recommended Council adopt an ordinance approving the subject rezoning with the condition that the project developer revise the project plans to include those conditions as proposed by staff and subsequently modified at the November 1, 1995 Planning Commission meeting. Based on a subsequent review of the applicant's proposed conditions, he stated Staff recommended that the conditions be revised to ensure that the *Inspection Services* condition require the applicant to fund inspection services whether or not a Citywide ordinance is implemented prior to operation of the facility; that the *Soil Contamination* condition not be revised to specify sealed concrete until information is provided verifying the feasibility of maintaining a sealed concrete surface and until a condition is added requiring submittal of a maintenance plan prior to the PD Permit; and that the condition regarding *Storm Water Treatment*, the *Operation Plan*, the *Sweeping of Paved Surfaces* and *Storm Water Monitoring* not be revised as requested by the applicant. He stated the applicant concurs with Staff recommendation with modified conditions as specified in the staff report and with mitigation measures as proposed by the Planning Commission to address the environmental issues identified as part of the Environmental Impact Report. Cindi Galfin, Corporate Officer/Property Controller, representing Pick Your Part in Anaheim, spoke in favor of the development and noted some of the key features of the proposed facility, e.g., extensive landscaping, masonry block walls, Mediterranean-style office building, paved/landscaped parking lot. Chuck Reed of Reed, Elliott, Creech and Roth, spoke in favor of Pick Your Part and environmental matters relating to residual fluids. In response to written criticisms and complaints of the proposed development in San Jose, he stated Pick Your Part agrees to the conditions of approval described in the supplemental staff report dated November 17, 1995. In responding to some of the complaints, he stated Pick Your Part has agreed to reimburse the City for inspection services deemed necessary by the City to ensure that the facility operates properly in accordance with the conditions of approval. In addition to the Staff proposed conditions, he stated Pick Your Part has agreed to make completion of the traffic signal light at the corner of Senter Road and Needles Drive a condition of approval. Jerry Strangis, representing Strangis Properties used overhead transparencies in support of the proposed project. The following citizens spoke in support of the proposed development: Larry Miller, representing Pick Your Part; Peter Larko, representing DDD Partners; and Joe Bass. The following spoke in opposition to the proposed facility: Craig K. Breon, Santa Clara Valley Audubon Society; Fadi A. Saba, Chair, Santa Clara County Greenbelt Coalition; Michael Todd; Dawna Hawksworth, Spartan Keyes Neighborhood Association; Richard Castillo; Jack DiCarlo, representing Citizens for Effective Planning; Logan B. Kittle, President, Santa Clara County Auto Recycling Association; Rudy Gonzales; Eddie Chiles, representing Tex' Auto Wrecking; Kathy Chavez-Napoli; Richard Van Scoter, Action Auto Wreckers; Karla Rosen, representing Spartan Keyes Neighborhood Association; John Haselden,

representing Spartan Keyes Neighborhood Association; Yolanda Hilario; William J. Garbett; Kristina Colbert; Julie Sachs; and Laura L. Murray. Speaking in support of the proposed rezoning, Council Member Shirakawa, Jr., stated the project developer has agreed to install the traffic signal at no cost to the City, and will allow the facility to be used as a “drop-off point” for discarded household appliances, at no cost to City residents. Related to concerns expressed by opponents of the project, he agreed the project will produce increased traffic flow, but that the truck traffic entering and leaving the facility will use major arterial from the freeways to Tenth Street then to Phelan, and that no truck traffic will be allowed on Senter Road. He stated the applicant has agreed to extend Needles Avenue from Tenth Street to Senter Road, thereby creating greater circulation for vehicular traffic. Related to the environmental impact concerns, he stated the Environmental Impact Report for the project has been approved by the Planning Commission certifying the development is compatible with other developments in the area. He stated the project provides a parking lot with a 25-ft setback with complete landscaping along the roadside; has been designed to ensure indoor draining of residual fluids from vehicles; and designed in an attempt to prevent negative impacts on property values and diminished quality of life in the area. He recommended that Council approve the Planned Development Rezoning with the following amendments (1) that “The EIR identifies cumulative air quality impact as significant and unavoidable; the PD rezoning will implement the City’s Sustainable Cities Strategy by encouraging recycling; the project will assist the City in meeting State Resources Recovery mandates which requires diversion of waste from landfills. These benefits outweigh the significant impact of the project which accounts for less than one-tenth of one percent of the total emissions generated in Santa Clara County”; (2) that the City Staff make the decision on an effective solution to prevent soil and groundwater contamination from residual fluids at the site; (3) that the City Attorney prepare an ordinance listing all the changes to the applicant’s revised plan; (4) that the applicant devise a plan that provides financial incentive to the customers to return old parts; (5) that if City Staff recommends sealed concrete at the facility, that the applicant pay for regular inspections of the sealed concrete and make repairs as needed for the duration of the operation; (6) that the applicant pay all costs for traffic signals at Needles and Senter Road to be operational at the opening of the facility; (7) and Staff directed to look at an ordinance to allow adjustment of registration fees to fund future inspections. As a point of clarification, City Attorney, Joan R. Gallo, stated the City Council will be adopting the resolution on the Environmental Impact Report making statement of overriding considerations and directing the City Attorney to prepare the PD zoning ordinance for Council consideration in two weeks. Council Member Fernandes stated she would work with Council Member Shirakawa, Jr., in resolving some of the problems produced by illegal and polluting auto recyclers and dismantlers in San José. Speaking in support of the recommendation to approve the proposed rezoning, Council Member Dando stated regular inspections should be conducted by Code Enforcement and Environmental Enforcement Inspectors, and that the project applicant assume financial responsibility for those inspections. She stated City Staff must ensure adherence to all the conditions; and if not, the auto recycling facility should be closed immediately. Vice Mayor Johnson requested that the issue of an area-wide inspection service fee be referred to the Transportation, Development and

Environment Committee for further consideration. Upon motion by Council Member Shirakawa, Jr., seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved with amended conditions as recommended by Staff, Resolution No. 66294, entitled: "Resolution of the City Council of the City of San José Making Certain Findings Required by the California Environmental Quality Act in Connection With the Pick-Your-Part Automobile Dismantling and Recycling Center For Which an Environmental Impact Report Has Been Prepared", was adopted, and the City Attorney directed to prepare the ordinance incorporating additional conditions for Council consideration at the December 5, 1995 meeting. Vote: 11-0-0-0.

The Committee of the Whole meeting scheduled to be held immediately following the evening Council meeting on the subject of emergency preparedness, including flood issues, was rescheduled to December 12, 1995 time certain 3:30 p.m.

ADJOURNMENT

The Council of the City of San José adjourned at 11:35 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK